

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Submitted on Briefs June 28, 2006

**KATHERINE STRATTON HOUGHLAND v.
CALVIN HUTTON HOUGHLAND**

**Appeal from the Circuit Court for Davidson County
No. 04D-369 Carol A. Soloman, Judge**

No. M2005-01770-COA-R3-CV - Filed on July 26, 2006

The issue presented in this divorce case is whether the evidence preponderates against the trial court's finding that the husband fraudulently induced the wife to loan him over \$225,000 before and during the parties' marriage. After careful review of the evidence and the applicable law, we hold that the evidence does not preponderate against the trial court's decision that the husband fraudulently induced his wife to loan him money, but that the full amount of the judgment is not supported by the record. Accordingly, we affirm the trial court's judgment as modified to the amount of \$214,753.41.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed as
Modified; Case Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P. J., and CHARLES D. SUSANO, JR., J., joined.

Thomas F. Bloom, Nashville, Tennessee, for Appellant, Calvin Hutton Houghland.

John J. Hollins, Sr. and James L. Weatherly, Jr., Nashville, Tennessee, for Appellee, Katherine Stratton Houghland.

OPINION

I. Factual and Procedural Background

Ms. Houghland and Mr. Houghland met while high school students in Nashville. After both received college degrees and started working in Nashville, they began dating in October 1999 and

began living together a month later. During the course of the courtship and marriage, Ms. Houghland, who had inherited a substantial sum of money from her grandparents, transferred to Mr. Houghland a total of \$225,569.90. The transfers, which began in September of 2001 and ended in approximately January of 2004, were initiated after Mr. Houghland started a computer networking business known as IT Hutton. The funds ostensibly were needed for startup and operating expenses of the enterprise and to support Mr. Houghland until the venture became profitable. According to Ms. Houghland, about the time of IT Hutton's incorporation, she consented to her future husband's requests for money, either by writing checks directly to Mr. Houghland or by making payments to other parties on his behalf. Additionally, she obtained credit cards for his use. Essentially, Ms. Houghland completely supported Mr. Houghland during this entire period. Ms. Houghland contends that each time he borrowed money from her, Mr. Houghland would promise her that she would be repaid once he received the millions of dollars to which he was entitled from a trust fund established by the will of his wealthy great-grandfather, J.M. Houghland, when Mr. Houghland's first cousin reached 21 years of age. She further notes that Mr. Houghland assured her that even if the inheritance was held up in court, his grandfather would repay the money.

In November 2002, Mr. Houghland signed a note promising to repay Ms. Houghland \$250,000, along with 15% interest, no later than 50 months after the date of the note. Pursuant to the note, Mr. Houghland was obligated to repay such sum in January 2007; at trial, however, Mr. Houghland asserted that he did not owe Ms. Houghland that amount as of the date of the note, but merely signed it because Ms. Houghland was extremely emotional and upset at the time in fear that she would not be repaid. Mr. Houghland further claimed that the promissory note was actually executed in November of 2003 instead of November of 2002.¹

Ms. Houghland married Mr. Houghland on March 22, 2003. Soon thereafter, Ms. Houghland claims that Mr. Houghland stopped going to work, started sleeping an inordinate amount, and began staying out very late or not coming home at all. When questioned by his wife, Mr. Houghland asserted that he was simply working too much and was sleep-deprived. Ms. Houghland believed that Mr. Houghland's behavior was due to an addiction to prescription medications, and requested that he seek help. In response, Mr. Houghland left their home and did not return for approximately a month. The parties' marriage failed, and the parties separated in November of 2003. Mr. Houghland's business also failed and was completely dissolved by January 2004.

On February 13, 2004, Ms. Houghland filed a complaint for divorce against Mr. Houghland on the ground of irreconcilable differences and alleged that Mr. Houghland had borrowed \$200,000 of her separate property. In his answer, Mr. Houghland admitted that the couple had irreconcilable differences, but denied that Ms. Houghland was entitled to a divorce. At that time, Mr. Houghland

¹The court observes that the note indicated the payee to be "Katherine Stratton," the name by which Ms. Houghland was known in November 2002, whereas in November 2003, after her March 2003 marriage, she was known as "Katherine Houghland." Neither party provided an explanation why the amount listed in the note does not match the total claimed by Ms. Houghland or shown by her records to be owed to her in 2002 or 2003.

stated that he had borrowed and promised to repay, with interest, only \$135,000 from Ms. Houghland. In August 2004, after her attorney obtained a copy of the late J.M. Houghland's will, Ms. Houghland purportedly discovered for the first time that her husband was not entitled to receive any money from any trust established by that will. In an amended complaint filed on February 3, 2005, Ms. Houghland alleged inappropriate conduct by Mr. Houghland and claimed that he had obtained money from her by fraud, misrepresentation and false pretenses. Specifically, Ms. Houghland alleged that the representations regarding the will were false, that Mr. Houghland knew they were false when he made them, and that Ms. Houghland relied upon them in making the loans. Ms. Houghland requested that the court award her a judgment of \$225,000 plus pre-judgment interest.

At trial, Mr. Houghland denied ever telling Ms. Houghland that he was to receive millions of dollars from a trust established by his great-grandfather's will upon Mr. Houghland's cousin attaining the age of 21, or that his grandfather would repay Mr. Houghland's debts. Mr. Houghland testified that he told Ms. Houghland he would pay her back from profits made by his company. He conceded that he may have told Ms. Houghland, because of her worry about repayment, that if he received some money from any family or other source, she would certainly be first in consideration. He denied obtaining money from Ms. Houghland by fraud or misrepresentation. Additionally, Mr. Houghland contended that the money given by Ms. Houghland was loaned to his corporation, not to him, and that he was not required to pay the debts of the corporation. He further denied that he had promised to pay Ms. Houghland \$225,000 with interest.

Following a bench trial on March 21 and 24, 2005, the trial court issued an order granting a divorce to Ms. Houghland on the grounds of inappropriate marital conduct, specifically finding that Mr. Houghland was "not a credible witness and could not be believed under oath," and awarding Ms. Houghland a judgment in the amount of \$225,562.90 upon determining that Ms. Houghland had loaned Mr. Houghland this amount as the result of his fraud. An agreed order was later entered setting the value of the wedding gifts awarded to Ms. Houghland in the divorce at \$20,000, thereby reducing Ms. Houghland's judgment against Mr. Houghland to \$215,562.90. Mr. Houghland filed a timely appeal.

II. Issue Presented

The determinative issue raised on appeal is whether the evidence preponderates against the trial court's finding that Mr. Houghland fraudulently induced Ms. Houghland to loan him approximately \$225,000.

III. Standard of Review

This is a non-jury case and, accordingly, our review is *de novo* upon the record of the proceedings below with a presumption that the trial court's factual findings are correct. Tenn. R. App. 13(d). We must honor this presumption unless we find that the evidence preponderates against those findings. *Id.*; *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

Conclusions of law made by the trial judge are reviewed *de novo* without a presumption of correctness. *Kendrick v. Shoemake*, 90 S.W.3d 566, 569 (Tenn. 2002); *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996).

Our *de novo* review is subject to the well-established principle that the trial judge who has the opportunity to observe the manner and demeanor of the testifying witnesses is in a far better position than the appellate court to assess credibility issues. Accordingly, such credibility determinations are entitled to great weight on appeal. *Mid-Century Ins. Co. v. Williams*, 174 S.W.3d 230, 236 (Tenn. Ct. App. 2005); *Massengale v. Massengale*, 915 S.W.2d 818, 819 (Tenn. Ct. App. 1995); *Bowman v. Bowman*, 836 S.W.2d 563, 566 (Tenn. Ct. App. 1991). The trial court's assessment of a witness' credibility will not be disturbed without clear and convincing evidence to the contrary. *94th Aero Squadron of Memphis, Inc. v. Memphis-Shelby County Airport Authority*, 169 S.W.3d 627, 634 (Tenn. Ct. App. 2004); *Tennessee Valley Kaolin Corp. v. Perry*, 526 S.W.2d 488, 490 (Tenn. Ct. App. 1974).

IV. Fraudulent Inducement

In concluding that Mr. Houghland fraudulently induced Ms. Houghland to lend him money, the trial court reasoned as follows:

Husband falsely informed his Wife that he would have the ability to repay the loan when he received millions of dollars as his inheritance from his grandfather's [sic] will when his cousin turned twenty-one years old. Husband knew at the time of making this representation that he would receive no such inheritance when his cousin turned twenty-one years old, as he had read his grandfather's [sic] will. Husband made these statements on numerous occasions to Wife so that she would loan him a continuous and substantial amount of money. Wife was justified in relying on Husband's statements, because Husband's grandfather [sic] was a man of substantial wealth. Because Wife relied on Husband's statements, she has lost more than \$225,000, which she had received as an inheritance from her grandfather.

The elements of fraudulent inducement, also called promissory fraud, are as follows: (1) an intentional misrepresentation of a fact material to the transaction; (2) knowledge of the statement's falsity or utter disregard for its truth; (3) an injury caused by reasonable reliance on the statement; and (4) a promise of future action with no present intent to perform. *Taylor v. Butler*, No. W2002-01275-COA-R3-CV, 2003 WL 21026938 (Tenn. Ct. App. W.S., Apr. 24, 2003). *See also Fowler v. Happy Goodman Family*, 575 S.W.2d 496, 499 (Tenn. 1978); *Carter v. Patrick*, 163 S.W.3d 69 (Tenn. Ct. App. 2004); *Dobbs v. Guenther*, 846 S.W.2d 270, 274 (Tenn. Ct. App. 1992). As indicated by the trial court, this court has held that an action for fraudulent inducement sounds in tort. *American Fidelity Fire Ins. Co. v. Tucker*, 671 S.W.2d 837, 841 (Tenn. Ct. App. 1983). As

noted in 37 AM. JUR. 2D *Fraud and Deceit* § 242, the tort of fraudulent inducement requires reasonable reliance on the false statement:

Deception inducing action

The tort of fraud requires proof of a successful deception and action taken by the person deceived that would not have otherwise been taken. For a party to be deceived, it must have reasonably relied on a false statement. Lack of evidence that the plaintiff relied on an alleged deception precludes a recovery for fraudulent concealment and fraudulent misrepresentation.

. . . .

Thus, where false representations are made to induce another to act, and, before such other does act, he or she learns of the falsity of such representations, such person cannot rely on them believing them to be true, for knowing of their falsity, that person has not been deceived and any loss is self-inflicted.

See also *Burton v. Hardwood Pallets, Inc.*, No. E2003-01439-COA-R3-CV, 2004 WL 572350 (Tenn. Ct. App. E.S., Mar. 22, 2004).

Mr. Houghland asserts that the trial court erred in finding that Ms. Houghland reasonably relied upon his alleged statements. Mr. Houghland cites *Solomon v. First American Nat. Bank of Nashville*, 774 S.W.2d 935 (Tenn. Ct. App. 1989) in support of his contention that the parties were dealing with each other on “equal terms” and that there is no evidence that he exercised dominion and control over Ms. Houghland so as to establish a confidential relationship between them. Moreover, Mr. Houghland claims that Ms. Houghland, rather than rely on his word, had a duty to investigate his representations by obtaining and reviewing Mr. Houghland’s great-grandfather’s will, which was of public record in Williamson County, Tennessee. Had she done so, Mr. Houghland asserts that Ms. Houghland would have determined that his purported statements of an impending inheritance were false and that her reliance on them was unreasonable. In essence, Mr. Houghland contends that Ms. Houghland should not have trusted his representations regarding repayment of the loans she had made to him.

In *Bratton v. Bratton*, 136 S.W.3d 595 (Tenn. 2004), the Tennessee Supreme Court described the relationship between a husband and a wife as being one of special confidence and trust. *Id.* at 601. The *Bratton* Court relied on a South Dakota Supreme Court case from which it quoted the following:

[Husband and wife] are not dealing with each other as strangers at arm’s length. The relationship of husband and wife is one of special

confidence and trust, requiring the utmost good faith and frankness in their dealings with each other.... Transactions of this character are scrutinized by the courts with great care, to the end that no unjust advantage may be obtained by one over the other by means of any oppression, deception, or fraud.... [L]ess evidence is required in such cases to establish the fraud, oppression, or deception than if the parties had been dealing at arm's length as strangers....

Id. (quoting *In re Estate of Gab*, 364 N.W.2d 924 (S.D. 1985). See also *Stutz v. Stutz*, No. E2004-01399-COA-R3-CV, 2005 WL 2016828 at *14 (Tenn. Ct. App. E.S., Aug. 23, 2005). This court has acknowledged that an engagement to marry likewise creates a confidential relationship between the parties. *Baker v. Baker*, 142 S.W.2d 737 (Tenn. Ct. App. 1940). See also *Estate of Baker v. King*, No. W2005-00847-COA-R3-CV, 2006 WL 1173130 (Tenn. Ct. App. W.S., May 4, 2006). Accordingly, we find that the parties' relationship was confidential in nature.

The rule in Tennessee is that the existence of a confidential relationship, followed by a transaction wherein the dominant party receives a benefit from the other party, leads to a presumption of undue influence that may be rebutted only by clear and convincing evidence of the fairness of the transaction. *Martin v. Moore*, 109 S.W.3d 305, 310 (Tenn. Ct. App. 2003). Because of the confidential relationship which existed between the parties, a fiduciary duty of the highest degree was therefore imposed in transactions between Mr. and Ms. Houghland. See 41 C.J.S. *Husband & Wife* § 87.

The trial court in this matter found that Mr. Houghland lied to Ms. Houghland about his expected inheritance from his great-grandfather's will; that at the time he made these false statements, Mr. Houghland knew that he was not expected to receive millions of dollars and that he made these lies for the purpose of convincing Ms. Houghland to loan him money; and that Ms. Houghland's reliance on these false statements was reasonable because Mr. Houghland's great-grandfather had been a person of substantial wealth. Every reason or excuse offered by Mr. Houghland was rejected by the trial judge with findings that Mr. Houghland had not been credible as a witness.

This court determined in *Winstead v. First Tennessee Bank N.A., Memphis*, 709 S.W.2d 627, 633 (Tenn. Ct. App. 1986) that the general rule regarding justifiable reliance and the means of knowledge is applicable "[u]nless the representations are such as are calculated to lull the suspicions of a careful man into a complete reliance thereon" *Id.* Applying that language to the facts of this case, the record supports the findings of the trial court that Mr. Houghland lacked credibility, that his representations to Ms. Houghland were to induce her to give him money, and that Ms. Houghland reasonably relied on his representations. In view of his fiduciary duty toward Ms. Houghland, we find that Mr. Houghland has not established by clear and convincing evidence that he treated Ms. Houghland fairly in his transactions with her.

Having misrepresented material facts to one who put her trust in him, Mr. Houghland also cannot claim that Ms. Houghland should have independently discovered that he was not telling the truth. *Id.* See also *Bagby v. Carrico*, No. 03A01-97-5-CV-00183, 1997 WL 772877 (Tenn. Ct. App. E.S., Dec. 9, 1997). One who practices bad faith upon another may not invoke the doctrine of constructive notice in aid of his own wrongdoing. *Bagby, id.* at * 4; *Hamilton v. Galbraith*, 15 Tenn. App. 158, 175 (1932). We further find insufficient support for defendant's contention that Ms. Houghland loaned the money to his corporation rather than Mr. Houghland personally. Significantly, in his deposition of September 2004, Mr. Houghland made no claims that Ms. Houghland loaned the money to IT Hutton Corporation. Allegations that the funds were provided to the company first arose approximately one week before trial in the answer to the amended complaint. Furthermore, on the promissory note, Mr. Houghland listed himself as the borrower, not IT Hutton.

We agree with the trial court that a preponderance of the evidence supports the conclusion that the transfers from Ms. Houghland to Mr. Houghland before August 2004 were fraudulently induced. However, we disagree that any transfers made after August 2004, when Ms. Houghland learned the contents of Mr. Houghland's great-grandfather's will, were fraudulently induced. In December 2004, after this divorce case had been pending for eleven months and after her lawyer had obtained a copy of Mr. Houghland's great-grandfather's misrepresented will, Ms. Houghland transferred to Mr. Houghland \$809.49. At that point in time, it cannot be said that Ms. Houghland reasonably relied on Mr. Houghland's promise to repay her from any inheritance. Where false representations are made to induce another to act, but one learns of their falsity before acting, such person cannot rely on the representations, for knowing of their falsity, that person has not been deceived and any loss is self-inflicted. See *Burton v. Hardwood Pallets, Inc.*, No. E2003-01439-COA-R3-CV, 2004 WL 572350 (Tenn. Ct. App. E.S., Mar. 22, 2004). Fraud involves deception and if one knows the truth and is not deceived, she is not defrauded. *Machinery Sales Co., Inc. v. Diamondcut Forestry Products LLC*, 102 S.W.3d 638 (Tenn. Ct. App. 2002). Therefore, the judgment issued to Ms. Houghland against Mr. Houghland for fraudulent inducement must be reduced by \$809.49 for a total judgment of \$214,753.41.

V. Conclusion

After careful review, we find that the evidence fails to preponderate against the findings of the trial judge with the exception of \$809.49; the judgment entered in favor of Ms. Houghland must be affirmed as modified to the amount of \$214,753.41. Accordingly, we affirm the judgment as modified and remand the case to the trial court for whatever further proceedings may be required. We tax the costs of this appeal to the Appellant, Calvin Hutton Houghland.

SHARON G. LEE, JUDGE